BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of Otter Tail Power Company for a Facility Permit for the Big Stone South to Hankinson to Bison 345 kV Transmission Line Project	**EL26-028** **APPLICANT'S RESPONSE TO LOUIS NIGG, TRUSTEE OF THE LYNN NIGG FAMILY DISCLAIMER TRUST'S APPLICATION FOR PARTY STATUS**

Otter Tail Power Company (the "Applicant") submits this Response to Louis Nigg, Trustee of the Lynn Nigg Family Disclaimer Trust's Application for Party Status (the "Petition"). Although filed by Louis Nigg in his capacity as trustee, the Petition states in the signature line that the Lynn Family Disclaimer Trust (the "Nigg Trust") is the petitioner seeking party status. The signature line further highlights that Louis Nigg signed the Petition in his capacity as trustee of the Nigg Trust. Applicant opposes the Nigg Trust's petition for party status and requests the Public Utilities Commission (the "Commission") clarify the identity of the party seeking party status and the legal requirements of formal intervention in a matter before the Commission.

Identity of the Party Seeking Party Status

Under the common law and South Dakota Supreme Court precedent, "where cause of action is prosecuted on behalf of an express trust, the trustee is the real party in interest because the trustee has legal title to the cause." *In re Est. of Calvin*, 2021 S.D. 45, ¶ 17, 963 N.W.2d 319, 324 (citation omitted). Here, the Nigg Trust has requested party status, however, the Nigg Trust is not the proper named party. Instead, the Nigg Trust's trustee, Louis Nigg as trustee of the Nigg Trust, is the proper real party in interest. Thus, Applicant requests the Commission clarify in any

order granting or denying the Petition that party status pertains to Louis Nigg as trustee of the Lynn Nigg Family Disclaimer Trust.

Unauthorized Practice of Law

Louis Nigg, as trustee of the Nigg Family Disclaimer Trust, seeks party status in EL 26-28. Applicant contends Louis Nigg's representation of the Nigg Trust's interest, in his role as trustee, would constitute the unauthorized practice of law. Thus, the Applicant requests that the Commission hold the Petition pending Louis Nigg, trustee of the Nigg Trust, obtaining counsel to represent him in that capacity before the Commission.

"Excepting as provided by § 16-18-2, no person shall engage in any manner in the practice of law in the State of South Dakota unless such person be duly licensed as an attorney at law, and be an active member of the State Bar in good standing." SDCL 16-18-1. In South Dakota, "[p]racticing law 'is not limited to conducting litigation, but includes giving legal advice and counsel, and rendering services that require the use of legal knowledge or skill and the preparing of instruments and contracts by which legal rights are secured, whether or not the matter is pending in a court.'" *Persche v. Jones*, 387 N.W.2d 32, 36-37 (S.D. 1986) (citation omitted). The purpose of the requirement of bar licensures and fitness "is to protect the public from the fraudulent, unethical or incompetent practice of law." *Steele v. Bonner*, 2010 S.D. 37, ¶ 16, 782 N.W.2d 379, 384 (citation omitted). Here, Louis Nigg, as trustee, seeks to represent the interests of the Nigg Trust.

Comparable to a trustee's authority to "prosecute and defend" claims under SDCL 55-1A-32, a guardian/conservator may "sue or defend on behalf of a minor or incompetent person" under SDCL 15-6-17(c). When faced with whether a non-attorney guardian could represent an incompetent person in court, the South Dakota Supreme Court held that SDCL 15-6-17 did not permit a non-attorney guardian to commit the unauthorized practice of law. *Danielson v. LifeScape*, 2025 S.D. 56, ¶ 8, 27 N.W.3d 493, 494-95. Thus, it stands to reason that the authority

of a non-attorney trustee to "prosecute or defend claims" in their role as trustee does not excuse the unauthorized practice of law.

Although the South Dakota Supreme Court has not been asked to opine on this narrow issue, other jurisdictions, such as Nebraska, Hawaii, Nevada, Texas, and Missouri, have answered that a trustee may not engage in the unauthorized practice of law to represent a trust's interests. *Back Acres Pure Tr. v. Fahnlander*, 443 N.W.2d 604, 605 (Neb. 1989) ("we agree with the holding of the Supreme Court of Hawaii that a trustee's duties in connection with his or her office do not include the right to present argument pro se in courts of the state, because in this capacity such trustee would be representing interests of others and would therefore be engaged in the unauthorized practice of law" (citing *In re Ellis*, 487 P.2d 286 (Haw. 1971)); *Salman v. Newell*, 885 P.2d 607, 608-09 (Nev. 1994) (dismissing an appeal because the trustee refused to retain legal counsel); *In re Guetersloh*, 326 S.W.3d 737, 740 (Tex. App. 2010) ("if a non-attorney trustee appears in court on behalf of the trust, he or she necessarily represents the interests of others, which amounts to the unauthorized practice of law" (citation omitted)); *Mayer v. Lindenwood Female College*, 453 S.W.3d 307, 314-15 (Mo. Ct. App. 2014) (holding when a trustee appeared in court, he necessarily represented the interests of the trust and thus his conduct constituted the unauthorized practice of law). At least one South Dakota circuit court has concluded the same under South Dakota law. *Hill v. Nelson*, No. Civ. 18-15, 2019 WL 13064875, at *2 (S.D. Cir. Dec. 26, 2019) (**Attachment 1**). Thus, this Court should require any trustee, including Louis Nigg, to obtain legal counsel prior to appearing before the Commission to represent the interest of a trust and the trust's beneficiaries.

Conclusion

Pending clarification of the party seeking party status and the retention of counsel, Applicant would not oppose Louis Nigg as trustee of the Lynn Family Disclaimer Trust's petition for party status.

DATED this 13th day of November, 2026.

/s/ Brock A. Brown

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CERTIFICATE OF SERVICE

I, Brock A. Brown, do hereby certify that I am a member of Boyce Law Firm, LLP, attorneys for Otter Tail Power Company and that on the 13th day of November, 2026, a true and correct copy of Applicant's Response to Louis Nigg Trustee of the Lynn Nigg Family Disclaimer Trust's Application for Party Status, Exhibit 1, and this Certificate of Service were served via email to the following addresses listed:

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*_/s/ Brock A. Brown_*
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